

Union Calendar No. 184

111TH CONGRESS
1ST SESSION

H. R. 3596

[Report No. 111–322]

To ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2009

Mr. CONYERS (for himself, Mr. JOHNSON of Georgia, and Ms. DEGETTE) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 2, 2009

Additional sponsors: Mr. ABERCROMBIE, Mr. SESTAK, Ms. SCHAKOWSKY, Mr. WELCH, Mr. NADLER of New York, Mr. VAN HOLLEN, Mr. SHULER, Ms. JACKSON-LEE of Texas, Mr. McDERMOTT, Mr. OLVER, Ms. WATERS, Mr. ROTHMAN of New Jersey, Mr. ELLISON, Mr. SHERMAN, Mr. GONZALEZ, Mr. KENNEDY, and Ms. WASSERMAN SCHULTZ

NOVEMBER 2, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Insurance In-

5 dustry Antitrust Enforcement Act of 2009”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to ensure that health

8 insurance issuers and medical malpractice insurance

9 issuers cannot engage in price fixing, bid rigging, or mar-

10 ket allocations to the detriment of competition and con-

11 sumers.

12 **SEC. 3. PROHIBITION OF ANTI-COMPETITIVE ACTIVITIES.**

13 Notwithstanding any other provision of law, nothing

14 in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-

15 monly known as the “McCarran-Ferguson Act”), shall be

16 construed to permit health insurance issuers (as defined

17 in section 2791 of the Public Health Service Act (42

18 U.S.C. 300gg–91) or issuers of medical malpractice insur-

19 ance to engage in any form of price fixing, bid rigging,

20 or market allocations in connection with the conduct of

21 the business of providing health insurance coverage (as de-

22 fined in such section) or coverage for medical malpractice

23 claims or actions.

1 **SEC. 4. APPLICATION TO ACTIVITIES OF STATE COMMIS-**
 2 **SIONS OF INSURANCE AND OTHER STATE IN-**
 3 **SURANCE REGULATORY BODIES.**

4 Nothing in this Act shall apply to the information
 5 gathering and rate setting activities of any State commis-
 6 sion of insurance, or any other State regulatory entity
 7 with authority to set insurance rates.

8 **SECTION 1. SHORT TITLE.**

9 *This Act may be cited as the “Health Insurance Indus-*
 10 *try Antitrust Enforcement Act of 2009”.*

11 **SEC. 2. PURPOSE.**

12 *It is the purpose of this Act to ensure that health insur-*
 13 *ance issuers and medical malpractice insurance issuers*
 14 *cannot engage in price fixing, bid rigging, or market alloca-*
 15 *tions to the detriment of competition and consumers.*

16 **SEC. 3. PROHIBITION OF ANTI-COMPETITIVE ACTIVITIES.**

17 *Notwithstanding any other provision of law, nothing*
 18 *in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-*
 19 *monly known as the “McCarran-Ferguson Act”), shall be*
 20 *construed to permit health insurance issuers (as defined in*
 21 *section 2791 of the Public Health Service Act (42 U.S.C.*
 22 *300gg–91)) or issuers of medical malpractice insurance to*
 23 *engage in any form of price fixing, bid rigging, or market*
 24 *allocations in connection with the conduct of the business*
 25 *of providing health insurance coverage (as defined in such*

1 *section) or coverage for medical malpractice claims or ac-*
 2 *tions.*

3 **SEC. 4. APPLICATION TO ACTIVITIES OF STATE COMMIS-**
 4 **SIONS OF INSURANCE AND OTHER STATE IN-**
 5 **SURANCE REGULATORY BODIES.**

6 *Nothing in this Act shall apply to the information*
 7 *gathering and rate setting activities of any State commis-*
 8 *sion of insurance, or any other State regulatory entity with*
 9 *authority to set insurance rates.*

10 **SEC. 5. EXCLUSIONS.**

11 *(a) EXCLUDED CONDUCT.—This Act shall not apply*
 12 *to making a contract, or engaging in a combination or con-*
 13 *spiracy—*

14 *(1) to collect, compile, or disseminate historical*
 15 *loss data;*

16 *(2) to determine a loss development factor appli-*
 17 *cable to historical loss data; or*

18 *(3) to perform actuarial services if such contract,*
 19 *combination, or conspiracy does not involve a re-*
 20 *straint of trade.*

21 *(b) DEFINITIONS.—For purposes of this section—*

22 *(1) the term “historical loss data” means infor-*
 23 *mation respecting claims paid, or reserves held for*
 24 *claims reported, by any person engaged in the busi-*
 25 *ness of insurance; and*

1 (2) *the term “loss development factor” means an*
2 *adjustment to be made to reserves held for losses in-*
3 *curring for claims reported by any person engaged in*
4 *the business of insurance, for the purpose of bringing*
5 *such reserves to an ultimate paid basis.*

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